

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-BB

RIO CHAMA STREAM SYSTEM
Section 7: Rito de Tierra Amarilla

**SCHEDULING AND PROCEDURAL ORDER FOR DETERMINATION OF
PRIORITY DATES AND IRRIGATION WATER REQUIREMENTS
IN THE RITO DE TIERRA AMARILLA SUBSECTION OF SECTION 7
OF THE RIO CHAMA STREAM SYSTEM**

This Order is entered by the Special Master pursuant to Fed.R.Civ.P. 16(b) to guide the course of the determination of priority dates and irrigation water requirements in the Rito de Tierra Amarilla Subsection of Section 7 of the Rio Chama Stream System (“Tierra Amarilla Subsection”).

I. DETERMINATION OF PRIORITY DATES.

A. Under the November 19, 2002 procedural order for the adjudication of surface water irrigation rights in Section 7, the adjudication of priority dates and irrigation water requirements will be initiated by the State following the completion of individual subfile activity. The adjudication of the elements of water rights in individual subfiles in the Tierra Amarilla Subsection for surface water irrigation use is now complete with the exception of the determination of priority dates and irrigation water requirements.

B. The State of New Mexico proposes the determination of the following ditch-wide

priority dates for irrigated lands under ditches located in the Tierra Amarilla Subsection as described below:

DITCH	PRIORITY DATE
Ismael Ulibarri Ditch	1870
Sena Ditch	1870
Nutritas Ditch No. 1	1870
Unnamed Ditch No. 1	1870
Lujan Ditch	1870
Labrier Ditch	1870
Nutritas Ditch No. 2	1861
Tierra Amarilla Community Ditch	1861
Trujillo Ditch	1887
Manzanares Ditch	1887
Unnamed Ditch No. 2	1887
Briggs Ditch	1887

C. The adjudication of water right priorities on community and private ditches in the Tierra Amarilla Subsection shall be completed in a show cause proceeding modeled on the process used in the determination of priority dates in Section 5 (Rio Gallina). *See Scheduling and Procedural Order for Determination of Priority Dates and Irrigation Water Requirements in the Rio Gallina Section of the Rio Chama Stream System* filed August 8, 2008 (Doc. 8752).

By May 7, 2010, the State of New Mexico shall file a Motion For Approval of Form of Notice and Order to Show Cause with respect to priority date offers that the State intends to serve on individual subfile defendants in the Tierra Amarilla Subsection. With this Court's approval of the proposed form of notice, the Notice and Order to Show Cause will be served by mail on all individual subfile defendants in the Tierra Amarilla Subsection. The form of notice will inform the defendants that the Court has entered an Order that requires them to file an objection with the Court if they disagree with either: (1) the priority date proposed by the State for their own water right and ditch,

or (2) the priority dates proposed by the State for any other community or private ditch in the Tierra Amarilla Subsection. In the absence of an objection to the priority dates proposed by the State, the Court may enter a final order with respect to priority dates of all ditches in the Tierra Amarilla Subsection. This determination of priority dates shall be subject to the right of water rights claimants in other Sections, or in other Subsections of Section 7, to object prior to the entry of a final decree. The defendants in the Tierra Amarilla Subsection will be informed that they will have no other opportunity to protest priority date determinations of the ditches in the Tierra Amarilla Subsection, and that subsequent *inter se* proceedings in the Tierra Amarilla Subsection will not include the opportunity to object to those determinations.

The State shall prepare a proposed Notice and Order to Show Cause in connection with all ditches in the Tierra Amarilla Subsection to be served on the Commissioners of each Community Ditch in the Tierra Amarilla Subsection and on the United States.

The State shall prepare a proposed Notice for publication to inform Defendants and all persons having water rights in the Tierra Amarilla Subsection of their right to participate and offer evidence in support of objections to the proposed determination of priority dates for ditches in the Tierra Amarilla Subsection. The approved Notice shall be published once a week for four consecutive weeks in the Rio Grande Sun.

II. DETERMINATION OF IRRIGATION WATER REQUIREMENTS.

A. The State of New Mexico proposes the determination of the following irrigation water requirements for lands located in the Tierra Amarilla Subsection as described below:

- a. The weighted consumptive irrigation requirement (CIR) is 1.05 acre-feet per

acre per annum.

- b. The farm delivery requirement (FDR) is 2.63 acre-feet per acre per annum.
- c. The project diversion requirement (PDR) is 4.38 acre-feet per acre per annum.

The irrigation water requirements in the Tierra Amarilla Subsection described above do not include diversion requirements associated with stockponds or other impoundments having valid water rights, which will be determined at a later date in these proceedings.

B. The adjudication of irrigation water requirements in the Tierra Amarilla Subsection shall be completed in a show cause proceeding using the procedures described above in connection with the determination of priority dates for ditches in the Tierra Amarilla Subsection.

By May 7, 2010, the State of New Mexico shall file a Motion For Approval of Form of Notice and Order to Show Cause in connection with the determination of irrigation water requirements that the State intends to serve on individual subfile defendants in the Nutrias Subsection. With this Court's approval of the proposed form of notice, the Notice and Order to Show Cause will be served by mail on all individual subfile defendants in the Tierra Amarilla Subsection. The form of notice will inform the defendants that the Court has entered an Order that requires them to file an objection with the Court if they disagree with the irrigation water requirements proposed by the State for all surface water irrigation use in the Tierra Amarilla Subsection. In the absence of an objection to the irrigation water requirements proposed by the State, the Court may enter a final order with respect to surface water irrigation requirements in the Tierra Amarilla Subsection. This determination of irrigation water requirements shall be subject to the right of water rights claimants in other Sections, or in other Subsections of Section 7, to object prior to the entry of a final decree. The defendants will be informed that they will have no other opportunity to protest the determination of irrigation water

requirements in the Tierra Amarilla Subsection.

The State shall prepare a proposed Notice and Order to Show Cause in connection with all ditches in the Tierra Amarilla Subsection to be served on the Commissioners of each Community Ditch in the Tierra Amarilla Subsection and on the United States.

The State shall prepare a proposed Notice for publication to inform Defendants and all persons having water rights in the Tierra Amarilla Subsection of their right to participate and offer evidence in support of objections to the proposed determination of irrigation water requirements in the Tierra Amarilla Subsection. The approved Notice shall be published once a week for four consecutive weeks in the Rio Grande Sun.

C. The State shall coordinate the mailing and publication of the Notices regarding the determination of priority dates and irrigation water requirements so that these events and the stated deadlines therein occur in a coordinated manner. The two Notices will be combined in a single mailing.

The Notices shall be mailed to the last known address of individual subfile defendants as they are listed in the Court's records. The State shall not be required to make a determination of current ownership of any tracts, nor mail notices to persons that are not a party to these proceedings. A successors-in-interest to an individual subfile defendant may request substitution of parties under Fed.R.Civ.P. 25(c) in order to participate in these proceedings.

D. After the deadline has expired for filing protests to the proposed determination of priority dates and irrigation water requirements, the State shall submit a proposed scheduling and procedural order to address and resolve any objections that are filed with the Court.

IT IS SO ORDERED.

Vickie L. Gabin

VICKIE L. GABIN, SPECIAL MASTER